REMARKS

Initially, applicant herewith exercises the option to file a reply under 37 C.F.R. 1.111.

Reconsideration and allowance of the above referenced application are respectfully requested.

Initially, the indication that claims 3-7 are allowed, and that claim 14 would be allowable if rewritten into independent form is appreciatively noted. Claims 3-7 are retained. Claim 14 has been amended into independent form. Claim 21 is canceled to obviate the rejections thereto. This leaves only the rejection of claims 8-13 based on prior art.

Claims 8-13 stand rejected over Brody in view of Borza. This rejection is respectfully traversed.

The scope and contents of Brody have been extensively discussed within the prosecution. Brody requires that each piece of software is individually personalized for each customer separately to include personal information prior to shipping the software. Paragraph 147 of Brody explains that each copy of the software is individually personalized when the software is made. All encryption and decryption in Brody is authenticated "prior to or during the software build". See paragraph 152 of Brody.

Borza, in contrast, defines an entirely different system which relies on a smart card to execute the software. Borza builds many software packages that are exactly the same – but customizes each software application to operate with only one unique smart card, see column 5 line 65 through column 6 line 2. Another words, the teachings of

Brody are entirely inconsistent with the teachings of Borza. Brody personalizes each copy during the software build. Borza builds each copy of the software to be the same, but personalizes the software so it can only run with a single smart card. The two references are wholly inconsistent.

The M.P.E.P. is entirely clear on when it is proper to combine references. References can not be combined when doing so would either contradict the teaching of one of those references, or would destroy the principle of operation of that one reference.

Here, there is no way to combine the references without contradicting one or the other. Brody describes personalizing the software during build time. Borza describes personalizing the software only at the time when the software runs. The two references are wholly inconsistent and can not be combined for this purpose. Doing so would be attempting to pick and choose only certain features of two references while ignoring the teaching of the reference as a whole. This is completely antithetical to the M.P.E.P. and is contrary to the law on the subject.

Brody teaches nothing about obtaining a reference biometric from an authorized user "at the time of installing the software". Brody teaches away from doing anything at the time of software installation. Therefore, claim 8 should be completely allowable for these reasons.

The dependent claims should also be allowable on their own merits. Specifically, claim 9 defines determining if a specified license used for installation has already been used for another installation. The rejection refers to paragraphs 23 and 58-60 of Brody. However, these portions do not support the rejection. Paragraph 23 simply describes

different techniques which have been used in the past, and characterizes them as not being good enough. In no sense could this be suggested to provide teaching to actually follow these techniques. Lines 58-60 define definitions that are used for the operation. There is no teaching or suggestion of determining if a specific license used for the installation has already been used for another installation. In fact, such would be wholly unnecessary from Brody, since Brody already personalizes each copy of the program.

Similarly, claim 10 is nowhere found in paragraphs 10, 15, 19, or 183 of Brody, nor anywhere else in the Brody disclosure. Again, the suggestion that paragraph 183, which simply states that "other schemes for it utilizing the personalization..." actually suggests the subject matter of claim 10 is contrary to the law of obviousness.

In addition, claim 11 defines sending the reference biometric to a server. This goes squarely against the teaching of Borza, who states column 7 lines 46-48 that the information should not be accessible to the computer. Borza has no teaching or suggestion of sending the reference biometric to a server.

It is believed that all of the pending claims have been addressed in this paper. However, failure to address a specific rejection, issue or comment, does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above are not intended to be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

Therefore, and in view of the above amendments and remarks, all of the claim should be in condition for allowance. A formal notice to that effect is respectfully solicited.

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Respectfully submitted,

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